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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

IVAN ROBINSON,

Defendant and Appellant.

D036905

(Super. Ct. No. SCD152837)

APPEAL from a judgment of the Superior Court of San Diego County, William H. Kennedy, Judge. Affirmed.

Ivan Robinson pleaded guilty to possessing cocaine base. (Health & Saf. Code, § 11350, subd. (a).) The court placed him on probation and ordered him to serve 120 days in jail. Robinson appeals, contending the court erroneously denied his motion to suppress evidence. (Pen. Code, § 1385.5.) We affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

The following facts were elicited during the hearing on Robinson's motion to suppress evidence. Around 10:30 p.m., San Diego Police Officers Krouss and Royalty patrolled an area well known for prostitution activity. They spotted a legally parked car in a cul-de-sac. Krouss, suspecting prostitution activity, turned off the lights on the patrol car and parked down the street from the parked car. Krouss and Royalty then approached the car on foot, flanking each of its sides. The officers observed two occupants in the car: Robinson, who was the driver, and a female passenger.

While Royalty spoke with the female, Krouss asked Robinson, "Would you mind stepping out of the car?" Robinson immediately complied. Krouss then asked Robinson to move to the rear of the car and requested proof of identification. Robinson gave Krouss an identification card and answered Krouss's general questions. Krouss copied down the card's information and handed the card to Royalty over the top of the car.¹ Royalty ran a records check that took no more than two minutes. The check revealed an outstanding warrant on Robinson.

After Royalty informed Krouss about the existing warrant, Royalty asked Robinson for permission to search his car. Robinson consented to the search. Krouss then handcuffed Robinson while Royalty searched the car. The search uncovered a glass pipe and cocaine base.

¹ Officer Krouss could not recall whether Robinson handed him a driver's license or an identification card; Officer Royalty recalled it being a driver's license.

After hearing this evidence, the trial court denied Robinson's motion to suppress the evidence found in the car. The court noted in its written findings that the initial encounter between Krouss and Robinson was consensual. The court further concluded the officers had a legal right to search Robinson's car based on consent and the existence of the warrant.

DISCUSSION

Robinson contends the court erred when it denied his motion to suppress because the evidence was obtained as a result of an unlawful detention rather than a consensual encounter. We disagree.

When reviewing a motion to suppress evidence, we first determine whether the trial court's factual findings, express or implied, are supported by substantial evidence. (*People v. Glaser* (1995) 11 Cal.4th 354, 362.) We then exercise our independent judgment to determine whether the search or seizure was reasonable under the Fourth Amendment based on the trial court's factual findings. (*Ibid.*)

The law recognizes a distinction between a consensual encounter and a detention when examining police and citizen interactions. (*Wilson v. Superior Court* (1983) 34 Cal.3d 777, 784.) An encounter is consensual if "a reasonable person would feel free to disregard the police and go about his or her business." (*In re Manuel G.* (1997) 16 Cal.4th 805, 821.) "No reasonable suspicion is required on the part of the officer" before contact is initiated. (*Ibid.*) A consensual encounter does not trigger Fourth Amendment scrutiny. (*Florida v. Bostick* (1991) 501 U.S. 429, 434.)

A detention, however, occurs when the police show physical force or authority or restrain a person's liberty in some way. (*Wilson v. Superior Court, supra*, 34 Cal.3d at pp. 789-790.) Detentions are strictly limited in duration, scope and purpose and are justified if the police have an "' . . . articulable suspicion that a person has committed or is about to commit a crime.'" (*Id.* at p. 784, citing *Florida v. Royer* (1983) 460 U.S. 491.) Detentions are examined under the Fourth Amendment's reasonableness standard. (*Florida v. Bostick, supra*, 501 U.S. at p. 434.)

"[I]n order to determine whether a particular encounter constitutes a [detention], a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter." (*Florida v. Bostick, supra*, 501 U.S. at p. 439.) Although the test is "necessarily imprecise" (*Michigan v. Chesternut* (1988) 486 U.S. 567, 573), circumstances that indicate a detention include the presence of several officers, weapon display, physical touching, and coercive language or tone of voice mandating compliance. (*United States v. Mendenhall* (1980) 446 U.S. 544, 554.) Courts also consider whether police officers used their patrol car to block the defendant's path or activated their car's sirens and lights. (See *Michigan v. Chesternut, supra*, 486 at p. 575; *People v. Perez* (1989) 211 Cal.App.3d 1492, 1494, 1496; *People v. Bailey* (1985) 176 Cal.App.3d 402, 406.)

Robinson contends he was unlawfully detained when Krouss asked him to step out of his car and walked toward the rear of his car. However, "[a] seizure does not occur

simply because a police officer approaches an individual on the street and asks a few questions." (*Florida v. Bostick, supra*, 501 U.S. at p. 434.) The person approached does not need to answer any questions put to him; indeed, he may decline to listen to the questions and go on his way. (*Ibid.*)

Further, the officers' conduct here communicated that Robinson was free to end the encounter. The patrol car was parked down the street with its lights off and the officers approached Robinson's car on foot. Krouss asked, rather than commanded, Robinson to step out of and move to the back of the car; Robinson willingly cooperated with Krouss's requests. There was no evidence Krouss used weapons, physical force, coercive language or threatening tones during the encounter to secure Robinson's cooperation.

We also reject Robinson's contention that Krouss's request for proof of his identification amounted to a detention. A police officer's request for identification does not transform an encounter into a detention. (*People v. Gonzales* (1985) 164 Cal.App.3d 1194, 1197.) Similar to Krouss's other requests, Krouss did not order Robinson to surrender his identification card nor did he use physical force, threats or coercion to obtain Robinson's card. Instead, Robinson voluntarily gave his identification card to Krouss in response to Krouss's request, which Robinson was free to decline.

Royalty's retention of Robinson's identification card while he conducted a warrant check does not alter our conclusion that a detention did not occur here. Robinson was entitled to retrieve his identification card from Royalty who remained near Robinson's car when he conducted the warrant check. Robinson never asserted that right and no

evidence indicates his failure to do so was related to anything the officers said or did during the encounter. (See *People v. Cartwright* (1999) 72 Cal.App.4th 1362, 1369-1371; but see *People v. Castaneda* (1995) 35 Cal.App.4th 1222, 1228; *People v. Bouser* (1994) 26 Cal.App.4th 1280, 1287-1288 and cases cited therein [court specifically considered fact that defendant's license was not retained by officer in finding a detention had not occurred].) The court correctly determined Robinson was not detained and therefore properly denied the motion to suppress.

DISPOSITION

The judgment is affirmed.

BENKE, Acting P. J.

I CONCUR:

HALLER, J.

McDONALD, J., dissenting.

Robinson contends he was detained by police officers Krouss and Royalty. The People contend Robinson, Krouss and Royalty had a consensual encounter.

For purposes of Fourth Amendment analysis, there are basically three levels of police interactions with individuals. The two relevant interactions here are consensual encounters and detentions. Consensual encounters are police-individual interactions that result in no restraint of an individual's personal liberty and may be properly initiated even if the police officer does not have any objective justification to contact the individual. (*In re James D.* (1987) 43 Cal.3d 903, 911.) Detentions are seizures of an individual that are limited in duration, scope, and purpose, and may legally occur if the police can articulate reasonable suspicion that a person has committed or is about to commit a crime. (*Ibid.*) The People do not contend there was a justification for a detention in this case; they contend there was no detention.

Detentions occur "when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen" (*Terry v. Ohio* (1968) 392 U.S. 1, 19, fn. 16.) A person has been detained within the meaning of the Fourth Amendment when, considering the surrounding circumstances, a reasonable person would have believed that he or she was not free to leave. (*United States v. Mendenhall* (1980) 446 U.S. 544, 554.)

The test for determining when a detention occurs is necessarily imprecise. (*Michigan v. Chesternut* (1988) 486 U.S. 567, 573.) "[W]hat constitutes a restraint on liberty prompting a person to conclude that he [or she] is not free to 'leave' will vary, not

only with the particular police conduct at issue, but also with the setting in which the conduct occurs." (*Ibid.*)

Here, uniformed and armed police officers approached and stood by both the driver's and passenger's side of Robinson's parked car. Robinson complied with Officer Krouss's request to get out of the car and the passenger complied with Officer Royalty's request to get out of the car. Robinson complied with Officer Krouss's request to walk to the rear of the car and to hand over possession of his driver's license. Officer Krouss then transferred possession of the driver's license to Officer Royalty, who was standing on the opposite side of the car. Under these circumstances, the trial court and the majority conclude that Robinson was not detained; that a reasonable person, during this course of events, would have felt free to disengage contact with the police officers and leave the scene of the officers' investigation.

The rationale of the trial court and the majority is that Robinson could have refused to talk with Krouss, who was standing next to the open driver's side window of the car, refused to get out of the car, refused to walk to the rear of the car, refused to produce requested identification and refused to remain at the scene. The officers conveniently testified that Robinson could have invoked these refusals without objection or impediment from them. Because Robinson could have invoked these refusals, there was no detention. However, the rationale of the trial court and the majority appears to be inverted. The refusals could have been effectively asserted only were there no detention. The trial court and the majority have assumed there was no detention to assert the refusals could effectively have been made. They have therefore assumed the conclusion

to establish the predicate facts on which the conclusion is based. Furthermore, the determination of whether Robinson was detained is not dependent on whether he was entitled to refuse to cooperate with the officers but whether a reasonable person would have believed he was free not to cooperate and free to leave the investigation. I submit that at least at the time possession of Robinson's driver's license was transferred from Officer Krouss to Officer Royalty, Robinson, as a reasonable person, not only did not believe he was free to leave; he could not legally leave without walking away and leaving his car. In my view, Robinson was detained.

The exclusionary rule prevents introduction of evidence obtained as the indirect product of an unconstitutional search or seizure. (*Segura v. United States* (1984) 468 U.S. 796, 804.) If the fact of an illegal detention has been established, the defendant bears the burden of going forward with specific evidence demonstrating a prima facie causal link between the primary illegality and secondary evidence allegedly tainted as a result of the detention. (See *People v. Coleman* (1975) 13 Cal.3d 867, 890, fn. 20.) However, the ultimate burden of persuasion to show the evidence is admissible is with the People. (*Id.* at p. 891, fn. 20.) The People can demonstrate evidence that is the "fruit of the poisonous tree" may be admissible despite its illegal origins if: (1) there was an independent source for the evidence, (2) it would have been available because of inevitable discovery, or (3) the connection between the source and the evidence is sufficiently attenuated. (*In re Javier A.* (1984) 159 Cal.App.3d 913, 926.)

Here, had Robinson not been illegally detained, Royalty would not have discovered the outstanding arrest warrant. Without the warrant, Robinson would not

have been arrested. Had Robinson not been arrested, there would have been no justification to search Robinson's vehicle. Robinson established a nexus between the unlawful detention and the challenged evidence. Consequently, the burden shifted to the People to prove that the evidence seized was admissible under one of the exceptions to the exclusionary rule. The People have not met that burden of proof. The court erroneously denied Robinson's motion to suppress.

DISPOSITION

I would reverse the judgment and remand to the trial court to permit Robinson to withdraw his guilty plea if he wishes.

McDONALD, J.